SUPREME COURT OF THE UNITED STATES.

No. 150.

BOLEN STRICKLIN, APPELLANT,

vs.

AUGUSTUS BONAFFE AND EDWARD BONAFFE, LATE PARTNERS UNDER THE NAME AND FIRM OF BONAFFE & Co., JOHN S. GOOCH AND JOHN HANDY.

ON APPEAL FROM THE CIRCUIT COURT U. S., FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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J. & G. S. Gideon, printers.

In chancery.

BOLEN STRICKLEN, complainant,
vs.
AUGUSTUS BONAFFE, EDWARD BONAFFE, JOHN GOOCH, AND JOHN HANDY, defendants.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States, in and for the ninth circuit and southern district of Mississippi, held at the town of Jackson, at the November term, in the year of our Lord one thousand eight hundred and forty-five.

Be it remembered, that heretofore, to wit, on the 25th day of November, in the year of our Lord one thousand eight hundred and forty-three, came Bolen Stricklen, who is a citizen of the State of Mississippi, into the clerk's office of the court aforesaid, by his solicitors Foote, Hutchison, and Russell, and filed his bill of complaint herein against Augustus Bonaffé and Edward Bonaffé, partners under the name and firm of Bonaffé & Co., who are citizens of the State of New York, and John S. Gooch, and John Handy, of the district aforesaid, defendants, which bill is in the words and figures, to wit:

To the judges of the circuit court of the United States, for the southern district of Mississippi, Bolen Stricklen, a citizen of the State of Mississippi, and resident in said district, brings this his bill against Augustus Bonaffé and Edward *Edward* Bonaffé, partners under the name and firm of Bonaffé & Co., of the State of New York, and John S. Gooch and John Handy, of the district aforesaid, defendants; and thereupon your orator complains and says:

1. That on the 19th day of April, 1843, your orator, as the surety of Jesse Battle, and conjointly with him as principal obligor, executed and delivered to Anderson Miller, marshal of the district aforesaid, by his deputy John S. Gooch, a bond, commonly called a forthcoming bond, of that date, payable to the said Augustus and Edward, composing the firm of Bonaffé & Co., with condition reciting that a writ of *fieri facias*, issued out of said court in favor of the said Bonaffé & Co., against the said Jesse Battle and others, on a judgment in said court for $1181\frac{31}{100}$, besides interest and costs, had been levied on the negroes John, Simon and Jim, a large sorrel horse, one wagon, and three yoke of oxen, as the property of said Jesse Battle, and stipulating for the delivery of said property to the said marshal, on the first day of May, then next, by 12 o'clock noon, at the front door of the State house in the city of Jackson, in which case the obligation should be void, otherwise to remain in full force.

2. Your orator on the said first day of May last, at about the hour of 11 in the forenoon of that day, appeared at the front door of the State house in the city of Jackson, bringing with him, and having then and there ready to deliver to the said marshal, the identical three slaves, horse, wagon, and three yoke of oxen, specified in the condition of said bond, with the view and determination so to deliver them, and perform, fulfil, and save the said condition, and be exonerated as surety, as he is advised and charges was his right to do; but not then and there finding said marshal, or either of his deputies, so far as either was known to him, he, your orator, went to the court house in said city, wherein he found Mr. George B. Adams, who he has been informed and believes was then one of the said marshal's deputies, to whom he made known the fact of the property being then brought into said city, and as being ready for delivery and sale on that the day of sale, and requested him to receive the same. The said Adams replied, that the said Gooch, who had attended to the matter, was then out of town, but was expected momently to return, would on arriving attend to the case, and that if he did not return in time, he, Adams, would receive the property, but for the reason given he at that hour declined receiving the same. Your orator then waited a short time. The said Gooch did return as stated and expected, to whom your orator made a like application and tender of the property, but he also declined receiving the property at the time the same was so offered, which was between the hours of 10 A. M. and 4 P. M., of that day, alleging, as an excuse, that he was obliged to give personal attention to several sales of property upon executions, but he assured your orator that he would receive the property in a few hours. Your orator then went to the place where the sales were being conducted, and there remained a short time, when, becoming uneasy and anxious to complete the object of his visit, he called on the marshal himself, stated the object of his trip to the city, pointed out to him the property, (all of it) on the ground, and urged him to receive the same according to the condition of the said forthcoming bond. The said Miller declared he knew nothing about the matter, but would go to the marshal's office and see said Gooch about it. The said Miller departed for the place of sale, as if such was his intention, and between the hours of two and four o'clock in the afternoon of the same day, returned to your orator and stated to him, that said Gooch was unable to receive and attend to or keep the property at that time, but having full confidence in your orator, desired him for his, the said Gooch's accommodation, to take the slaves and property back to his, your orators' house, and keep the same safe till another day, to which the sale of it would be postponed, and in the mean time to come to Jackson when he should send him word; to this request the said Miller added his own wish to the same effect; whereupon, your orator believing he had done all that lay in his power to perform and keep the condition of said bond, confiding fully in the said Gooch and Miller, and not entertaining the least distrust or apprehension that they or either of them would attempt to take advantage of an act of friendship to them, and one that

was really of inconvenience and trouble and expense to him, returned to his residence a few miles distant from Jackson, taking with him the said slaves and property, believing he was to be regarded no longer as surety, but merely as a friend of the said Miller and Gooch.

3. The said Gooch accordingly sent a message to your orator to go to town on the 10th day of May last, when he went to Jackson, and when he gave to said Gooch the receipt of that date, which is hereto annexed as exhibit A, and prayed to be taken as part of this bill, by which it will be seen that the said Gooch recognised the property, (being the identical property rendered as aforesaid, as the first day and first Monday of that month,) as having been from that day, and as being then, actually in the hands of the marshal.

4. Your orator charges, that he at the request of said Gooch, and pursuant to the said receipt, did on the 22d day of May last, deliver to J. F. Irish, another deputy of the marshal, at the town of Canton, all of the said property, and redeemed his receipt. The memorandum written across the said receipt, and signed by said Gooch, is thus explained; after the delivery to said Irish on that day, the sheriff of Madison county, on some process, took the negro Simon and actually sold him; and said Gooch, to exonerate your orator, made the memorandum on the receipt, exhibit A; but the purchaser, as your orator is informed and believes, finding he could get no title under the sheriff's sale, surrendered Simon to the marshal, and he was sold on a subsequent day, to satisfy the judgment of said Bonaffé & Co. The said John and Jim, the wagon, oxen and horse, were sold by the marshal's deputy, on the said 22d May, and the product applied towards said Bonaffé & Co. satisfaction.

5. After all the transactions, your orator rested in perfect confidence that he was quit of all farther responsibility, and some time afterwards departed on a journey beyond the State of Mississippi, and did not return until the 21st instant, when to his astonishment he was informed of the following unwarranted and illegal proceedings, with a view to subject his estate to sacrifice, as if it were still liable to any further satisfaction of said Bonaffé & Co's. judgment, all of which he will proceed to state from the information of his friends, and from the inspection of the execution and returns thereon, as examined by one of his solicitors. The said forthcoming bond, although fully performed as stated, was returned as forfeited; and, on the 5th day of May last, a fieri facias thereon, as on a statutory judgment was issued, on which are endorsed by way of return, that it was received on the day of its date; that on the 10th day of that month it was levied on the three slaves and property above named; that John, Jim, the oxen, wagon and horse, were sold on the 22d of that month to a Mr. Powell for sums named, and that Simon was sold to one Taylor on the 7th July; that on the 30th September, the said execution was levied on the following, as your orator's property, to wit: the S. ½ of the S. W. ¼ of section 28; the N. ½ of the E. ½ of S. W. ¼ of section 28; and W. ½ and S. W. ¼ of section 29; and S. E. ¼ of section 28, all of township seven, range one east, containing 360 acres more or less, and that the same was sold at Canton, on the 30th day of

October, 1843, to the said Handy, at one cent per acre, or $3 60; also that, on the fourth instant, a farther levy had been made on a negro man named Shephard, as your orator's property, which negro man was not sold for want of time. Your orator has not annexed, as exhibits or proof, copies on which said bond was taken, of said bond, or of the illegal and void execution issued on said bond, or of the returns thereon; but for brevity, and to save expense to all concerned, he states, from the information of his solicitor, the substance thereof; and as the same are of record in this honorable court as a court of law, he prays your honors will order the originals to be laid before you for inspection, as well as for proofs in this cause; on such, the information of your orator's agents and solicitor, he further charges, that after the levy on your orator's said lands, two of his agents, Joseph J. Battle and John C. Gillespie, came to Jackson, and gave to said solicitor A. Hutchinson information of said levy, of your orator's absence, of their belief that the property had been delivered in discharge of the condition of said bond; that this occurred on the 27th October; that said solicitor instructed them, it being impossible at that day to get any order or fiat from his honor the judge of said district,) to appear at Canton on the day fixed for the sale, and make known to the crowd and bidders the fact of the delivery of the property aforesaid in satisfaction and discharge of said forthcoming bond, as well as all of the other facts then known or believed concerning the same; to state your orator's discharge, that the execution was void, and that whoever should purchase would do so wrongfully and acquire no title; that such instructions were pursued by said Gillespie, that the bystanders, bidders, and the said Handy, did hear the same and get notice, and that if the said Handy was not present when said proclamation was made, he was informed thereof before his pretended purchase. Indeed, your orator has reason to suspect, and charges the fact so to have been, that the said Handy was only the nominal purchaser, but really for the benefit of said Gooch. At all events, your orator charges on the said information that his agents did for him on that occasion all that under the circumstances could well be done, and all that was in reason and justice required, to give notice of the voidness of the execution and sale; and he adverts to the mere nominal bid of said Handy as intrinsic evidence that those facts were known and believed by the bidders, inasmuch as the lands put in sale formed part of the valuable plantation on which your orator resides, and were worth, at the lowest estimate, $15 per acre.

6. Your orator charges, that in the manner hereinbefore stated the condition of the said forthcoming bond was performed; that the forfeiture thereof reported to the court was unfounded, untrue, and fraudulent; that the *fieri facias* issued thereon was in consequence void, and gave no authority whatever for any levy, proceedings, or sale, on or of your orator's property or estate; and that the said sale of your orator's lands, &c., was and is totally fraudulent and void; that the return thereon, stating a levy on the said three slaves, John, Jim and Simon, the horse, oxen and wagon, is untruly stated as having been made on

the 10th day of May last, but that the true levy thereon was that which preceded the forthcoming bond; that the said property after being duly tendered in discharge of the bond, and virtually received as above shown, was sold at public sale, producing its fair saleable value, and has been applied towards satisfaction of said judgment; and to show to your honors the truth of the allegations herein, in regard to the punctual delivery of the said property, according to the condition of said bond, he presents and files herewith the affidavits of Thomas K. Green and Samuel B. Daughity, marked B.

7. Your orator states that the negro man Shepherd, lastly taken in execution, is as he believes of the value of $700, and that process for his sale likewise will no doubt be issued, unless prevented by the interposition of your honors.

8. Your orator supposes it true, and so charges the fact to be, that a deed of conveyance from the said marshal to said Handy for the lands aforesaid, on the fraudulent and void purchase aforesaid, has been made, and that the same will cover, as by a cloud, the title of your orator, and that he can only have the same cancelled, vacated, or removed, by the decree of this honorable court herein.

All of which acts of the said Bonaffé & Co., and of the said Gooch and Handy, are contrary to equity; in consideration whereof, your orator prays that they may be made defendants hereto; that the writ may be awarded to summon them to answer this bill, on or before the next term of this honorable court, sitting as a court of equity; that the said defendants may be compelled, on oath, to answer all and each of the matters herein alleged, and especially the following interrogations.

1. Was not the forthcoming bond made as herein first above stated?

2. Did not your orator tender the property named in the condition of said bond to the said Adams, to the said Gooch, and to the said marshal; and was not said property virtually received by the said marshal in the manner and under the circumstances set forth in the second paragraph of this bill? Let them respond as to each particular alleged.

3. Did not said Gooch send the message stated in the third paragraph of allegation above? Did not your orator give the receipt exhibit A, as therein stated?

4. Did not every thing occur as stated in the fourth paragraph of allegation, precisely and particularly as therein set forth?

5. Are not the matters, set forth in the fifth paragraph of allegation above, true as therein stated? And especially, did not the agent of your orator, at the pretended sale of said lands, make known the facts of the satisfaction of the forthcoming bond, &c., as stated; forbid the sale, and warn any and all bidders; and were not the said facts notorious at said sale? Did not said Handy purchase under a secret arrangement with said Gooch for his benefit, and with knowledge of the facts rendering the execution of the sale fraudulent and void?

6. Are not all the matters stated in the sixth paragraph of allegation true as therein set forth?

7. Is not the negro Shepherd worth $700, or about that sum?

8. Has the said Handy received a deed of conveyance from the marshal, as supposed and charged in the 8th paragraph; and if so, will he produce the same? Your orator prays that the same may be produced in court, to be cancelled.

Your orator prays the writ to enjoin the said Augustus Bonaffé, their agents, attornies, and all for them concerned, from proceeding further on said forthcoming bond, or any final process thereon, until the further order or decree hereon; that the negro Shephard may in the mean time be restored to your orator; that on final hearing it may be decreed, that said injunction be perpetuated; that the supposed statutory judgment, in consequence of the fraudulent and illegal return of said forthcoming bond as forfeited, vacated as fraudulent and void; that the pretended sale of your orator's lands, and the marshal's deed to said Handy, if given, be vacated as also fraudulent, baseless, and void, and the said deed cancelled in court; and that your orator may have all such other relief as, under the matters appearing, may seem equitable.

FOOTE, HUTCHISON & RUSSEL,
Solicitors for complainant.

The complainant, according to the rule in such case, requires the defendant to answer each of the interrogatories propounded in the above bill, to wit, No. 1, 2, 3, 4, 5, 6, 7, and 8, and that the answers to each may be specified and in detail.

FOOTE, HUTCHISON & RUSSEL,
Solicitors for complainant.

MISSISSIPPI, *Hinds county, sct:*

Before the undersigned, a justice of the peace of said county, this day came Bolin Stricklen, complainant in the foregoing bill, and made oath that the facts therein set forth, as of his own knowledge, are true; and that those otherwise stated he believes to be true, as the same are therein set forth.

BOLEN ST RICKLEN.

Sworn to and subscribed before me, the 23d day of November, 1843.
A. MORGAN, *J. P.*

MISSISSIPPI, *Hinds county, sct:*

Bolin Stricklin, this day makes oath before me, that on this morning on hearing the second paragraph of the bill read, he found it contained an inaccuracy in regard to the place where he went to and found the deputy marshal Adams, and also as to the hours stated in that paragraph, and that those errors escaped his observation when the bill was read to him on yesterday, but that the same as now corrected are true to the best of his knowledge and memory.

BOLIN STRICKLIN.

Sworn to and subscribed before me, the 24th of November, 1843.
A. MORGAN, *J. P.*

The preceding bill was designed only to obtain a perpetual injunction of the statutory judgment on the forthcoming bond, *so far as the complainant*, the surety, was concerned. We thought the bill was shaped to that end, but find in the prayer for the injunction the words "as to your orator" or some equivalent, were omitted by inadvertence; it may therefore be considered that the bill and the order for injunction were, and are, only for the protection and exoneration of the complainant.

On behalf of the complainant, we do not object to the issuance of execution, provided the clerk endorses upon it "this execution is not to be executed as to Bolin Stricklin, he having enjoined the judgment on forthcoming bond as to him," the injunction as to Stricklin is not to be prejudiced hereby. Feb'y, 17th, 1844.

FOOTE, HUTCHISON & RUSSELL,
Solicitors for complainants.
VAN WINKLE & POTTER,
for defts. Bonaffé & Co.

And on the same day of filing bill aforesaid, the following order was made and entered on the minutes of said court, to wit:

BOLEN STRICKLIN, vs. BONAFFE & Co. et al. } In chancery.

Motion for an injunction sustained. It is ordered by the court, that an injunction be granted upon the complainant giving bond in double the amount of the judgment at law sought to be enjoined, to be approved by the clerk of this court.

Copy of exhibits to bill.

Exhibit A.

BONAFFE & Co. vs. JESSE BATTLE et al., and surety. }

Circuit court U. S., to November term, 1843.

Received of Anderson Miller, marshal, the following property, namely, one negro man named John, one negro man named Simon, one do. Jim, one wagon and three yoke of oxen, and one large sorrel horse, levied on in the above stated case as the property of Jesse Battle, which I will deliver to said Anderson Miller, or his deputy J. S. Gooch, on the 22d day of May, 1843, at Canton, or before that time at Jackson. May 10th, 1843.

BOLIN STRICKLIN,

The negro boy Simon was taken out of Mr. Stricklin's hands by the sheriff of Madison county.

J. S. GOOCH.

B.

STATE OF MISSISSIPPI, *Hinds county:*

Personally appeared before me, Austin Morgan, a justice of the peace in and for said county, who being duly sworn says, that he has heard read the bill of complaint of Bolin Stricklin against Bonaffé & Co., John S. Gooch and John Handy; that he was present when the forthcoming bond therein mentioned was taken; that he knows two of negroes, Jim and John, and the other property levied on and included in the bond; that, between the date of the bond and the first day of May last, affiant had a conversation with said Stricklin, in which Stricklin expressed his determination to deliver the property according to the condition of the bond; that upon the first day of May he saw Mr. Stricklin and Gooch together in Jackson, and heard Mr. Stricklin say to Mr. Gooch that he wanted his bond, and that there was his property, which was in front of the State house in Jackson, Mr. Stricklin pointing to the property; affiant says, that there were three negroes present, two of them he knew, and the other he believes to be Simon; there was also there one wagon, three yoke of oxen, one horse; that his property was there, and this conversation occurred just before four o'clock on that day, the precise hour not recollected; affiant is of the impression that the conversation occurred just after Mr. Gooch's arrival in town, and before he proceeded to make sales.

THOS. K. GREEN.

Sworn to and subscribed before me, this 23d day of Nov., 1843.

A. MORGAN, *J. P.*

STATE OF MISSISSIPPI, *Hinds county:*

Personally appeared before me, Austin Morgan, a justice of the peace in and for said county, Samuel B. Daughity of Madison county, who being duly sworn says, that he knows the three negroes mentioned in the bill of complaint of Bolin Stricklin vs. Bonaffé & Co. et al., also the wagon, and three yoke of oxen, and horse, also mentioned therein, to have been the property of Jesse Battle; that he was in Jackson on the first day of May, 1843, and there saw, about eleven o'clock, the above mentioned property on the open square in front of the State house in Jackson; that he remembers particularly, because he was requested by Mr. Bass, one of the sureties, to notice the arrival of the property, and see to its delivery to the marshal; that after the property had arrived, and before the arrival of Mr. Stricklin in town, who was then on his way, he (affiant) at the request of Mr. Bass, called at the marshal's office, it not yet being 12 o'clock, and saw Mr. George B. Adams, and requested him to receive the property, which he consented to do; that affiant again went to Mr. Adams, urged by Mr. Bass, and requested him to go and take charge of the property; he replied that he would, but it did not make much difference, Mr. Stricklin was good for the money any how; that he, affiant, afterwards in the afternoon, some time before 4 o'clock he believes, saw Mr. Stricklin and Miller, the marshal,

together, and Mr. Stricklin and Gooch; that he saw Mr. Stricklin in Jackson, before 12 o'clock that day.

S. B. DAUGHITY.

Sworn to and subscribed before me, this 23d Nov., 1843.

J. MORGAN, *J. P.*

Copy of bond.

UNITED STATES OF AMERICA,

Southern district of Mississippi, set:

Know all men by these presents, that we, Bolin Stricklin and John T. Sorsby, are held and firmly bound unto Augustus Bonaffé and Edward Bonaffé, under the firm of Bonaffé & Co., in the just and full sum of twenty-five hundred dollars, lawful money of the United States, to be paid to the said Bonaffé & Co., their executors, administrators, or assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated the 29th day of November, A. D. 1843. The condition of this obligation is such, that whereas the above bound Bolin Stricklin has obtained from the honorable Peter V. Daniel, one of the judges of the circuit court of the United States, for the southern district of Mississippi, an injunction to stay all further proceedings at law, in a certain judgment in said court against Jesse Battle, Joseph J. Battle, and Edwin Bass, judgment rendered 7th day of December, 1841, for $1181\frac{31}{100}$, with interest and costs, bonded; and bond forfeited with said Bolen Stricklin, security, May 1st, 1843, at the suit of said Bonaffé & Co.

Now, if the said Bolen Stricklin, in case the said injunction shall be dissolved, shall well and truly pay all money and costs due, and to become due, to the said Bonaffé & Co., the plaintiffs in the said judgment, and also all such costs and damages as shall be awarded against him, then this obligation to be void, otherwise to be and remain in full force and virtue.

BOLEN STRICKLIN, [SEAL.]
JOHN T. SORSBY. [SEAL.]

Sealed and delivered in presence of--

UNITED STATES OF AMERICA,

Southern district of Mississippi:

Circuit court, U. S.

Personally appeared before me, the undersigned clerk of said court, John T. Sorsby, who made oath that, after the payment of all his debts and liabilities, security and otherwise, he is worth the amount of the penalty of the within bond, twenty-five hundred dollars.

JOHN T. SORSBY.

Sworn to and subscribed this 5th day of December, 1843.

W. H. BROWN, *Clk.*

And afterwards, to wit, on the 5th day of December, 1843, the following writ of subpœna issued out of the clerk's office of the court aforesaid, in the words and figures following, to wit:

UNITED STATES OF AMERICA,

Southern district of Mississippi, ss:

The President of the United States, to Augustus Bonaffé and Edward Bonaffé, under the firm of Bonaffé & Co., John S. Gooch and John Handy, greeting:

For certain causes offered before us, in our circuit court for the southern district of Mississippi, sitting in chancery, we command you, that, laying aside all other matters, and notwithstanding any excuse, you personally appear at our circuit court in and for said district, sitting in chancery, to be held at the town of Jackson, on the first Monday of February, 1844, to answer to a bill of complaint exhibited against you by Bolen Stricklin, complainant in our said court, and further to do and receive what our said court shall consider in this behalf. Hereof fail not, as you will answer the contrary at your peril.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday in No-
[SEAL.] vember, A. D. one thousand eight hundred and forty-three, and in the 68th year of the independence of the United States.

Issued the 5th day of December, 1843.

W. H. BROWN, *Clk.*

To the marshal of the southern district of Mississippi, to execute and return.

Marshal's return.

"January 15th, 1844, service acknowledged.

J. S. GOOCH.

Executed on Van Winkle, January 17th, 1844, and on John Handy January 29th, 1844.

ANDREW MILLER, *Marshal,*
By dept'y J. F. IRISH.

And afterwards, to wit, on the 5th day of December, A. D. 1843, the following writ of injunction issued, in the words and figures following, to wit:

UNITED STATES OF AMERICA,

Southern district of Mississippi, ss:

The president of the United States, to Augustus Bonaffé and Edward Bonaffé, partners under the firm of Bonaffé & Co., their counsellors, attorneys, and agents, greeting:

Whereas, it hath been represented to us, in our circuit court, for the

ninth circuit and southern district of Mississippi, in chancery sitting, on the part of Bolin Stricklin, complainant, that he lately exhibited his bill of complaint against you, Augustus Bonaffe and Edward Bonaffé, partners as aforesaid, and John S. Gooch and John Handy, defendants, to be relieved touching the matters in said bill contained. We, therefore, in consideration of the premises, and of the allegations in said bill contained, strickly enjoin and command you, the said Augustus Bonaffé, Edward Bonaffé, as partners as aforesaid, the marshal of the southern district of Mississippi, and all others, under the penalty of two hundred and fifty dollars, to be levied of your goods and chattels, lands and tenements, to our use, that you absolutely refrain from proceeding to collect the amount of a judgment rendered in favor of Bonaffé & Co. vs. Jesse Battle, Jos. J. Battle and Edwin Bass; judgment rendered 7th day of December, 1841, for the sum of $1181\frac{31}{100}$ with interest and costs, fi. fa. to May term, 1845; bonded, and bond forfeited, with Bolen Stricklin as security; and from any further proceedings against the said complainant, touching the matters in said bill contained, until our said court shall make another order to the contrary.

Witness the honorable Roger B. Taney, chief justice of the Supreme court of the United States, at Jackson, the first Monday in
[L. S.] November, A. D. 1843, and in the 68th year of the independence of the United States of America.

Issued the 5th day of December, A. D. 1843.

W. H. BROWN, *Clk.*

Copy of Gooch and Handy's demurrer.

The demurrer of John S. Gooch and John Handy, to the bill of complaint of Bolin Stricklin, complainant, against the said Gooch and Handy, and Augustus and Edward Bonaffé.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, do demur to the same, and for cause of demurrer say, that the complainant has not by his said bill, in manner and form as allegations therein are set forth and alleged, shown himself entitled to any discovery and relief, touching the matters and things in it contained, or any such matters; wherefore, &c.

W. YERGER & A. H. HANDY,
Solicitors.

I certify that in my opinion the foregoing demurrer is well founded in point *at* law.

W. YERGER, *Sol.*

Copy of Bonaffé & Co's. demurrer.

The demurrer of Edward Bonaffé and Augustus Bonaffé, two of the defendants to the bill of complaint of Bolin Stricklin, complainant, against the said Edward and Augustus, and John S. Gooch and John Handy, defendants.

These defendants, by protestation, not confessing nor acknowledging all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, doth demur thereto, and, for cause of demurrer, show that the said complainant hath not in or by his said bill made or stated a case as doth or ought to entitle him to any such discovery or relief as is thereby sought and prayed for, from or against these defendants; wherefore they demand the judgment of this honorable court, whether they shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained; and pray to be hence dismissed, &c.

And these defendants show, for causes of demurrer, the following—

1. The said complainant cannot deny or question the truth of said return by said marshal, that said bond was forfeited.

2. That the several defendants in said original judgment, are not made parties to said bill of complaint.

3. The said complainant, as appears in and by said bill, had adequate remedy at law, and that the said complainant is precluded from the relief asked by the judgment in said forthcoming bond.

VAN WINKLE & POTTER,
For Bonaffé & Co.

I certify that in my opinion the foregoing demurrer is well founded in point of law.

GEORGE L. POTTER,
Counsel for Bonaffé & Co.

George L. Potter, one of the counsels for the said defendants, Bonaffé & Co., saith, that the foregoing demurrer is not interposed for delay.

GEORGE L. POTTER.

Subscribed and sworn to before me, this 3d day of May, A. D. 1844.
W. H. BROWN,
U. S. Com'r.

Copy of Decree.

This cause coming on to be heard at a former day of said term, before the honorable Samuel J. Gholson, district judge presiding, on the demurrer of the defendants Bonaffé & Co., and on the demurrer of the defendants Handy and Gooch, and the counsel for the complainant and the defendants having been heard, and the court having now fully considered the same, it is ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree, that the said demurrer be sustained, and that the said injunction be dissolved, and the said bill of complaint dismissed; and the said injunction is hereby dissolved, and the said bill of complaint dismissed at the costs of the said complainant.

It is further ordered, that the defendants have execution against the

said complainant, for the said costs, to be taxed; ordered, adjudged and decreed, this 17th day of November, A. D. 1845.

S. J. GHOLSON.

From which decree, the complainant prays an appeal to the Supreme Court of the United States, which is granted, upon his giving bond within ten days.

Copy of Appeal bond.

Know all men by these presents, that I, John C. Gillespie, am held and firmly bound unto Augustus Bonaffé and Edward Bonaffé, late partners under the firm of Bonaffé & Co., John S. Gooch and John Handy, in the penal sum of two thousand dollars, for whose payment I bind myself, my heirs &c., jointly and severally, firmly by these presents. Sealed with my seal, and dated this 17th day of November, 1845. The condition of this obligation is such, that whereas, on this day, in the circuit court of the United States, for the southern district of Mississippi, in a cause in equity therein, between Bolin Stricklin, complainant, and said Bonaffé & Co., Gooch and Handy, defendants, the said court hath made its final decree, dissolving the injunction therein, and dismissing the complainant's bill, with costs, &c.; but the said Stricklin hath obtained an appeal with supersedeas, to the next term of the honorable the Supreme Court of the United States from said decree, and hath been permitted to give this bond as security for that appeal; now, therefore, if the said Stricklin shall prosecute his said appeal with effect, or on failure shall answer, pay, and satisfy the judgment and decree of said Supreme Court, and all damages and costs that shall be awarded thereby against him, or which shall in any manner be sustained by or in consequence of such appeal, then the above obligation to be void, otherwise to remain in full force and effect.

J. C. GILLESPIE. [SEAL.]

It is agreed and certified, that the residue of the judgment enjoined, and the value of the lands which are in controversy in this cause, exceed in amount the sum of two thousand dollars.

November 17th, 1845.

W. YERGER,
For Gooch and Handy.
FOOTE & HUTCHINSON,
Attorneys for comp'lt.
VAN WINKLE & POTTER,
For Bonaffé & Co.

UNITED STATES OF AMERICA,
Southern district of Mississippi:
Circuit Court U. S.

I, William H. Brown, clerk of said circuit court, do hereby certify,

that the foregoing twenty pages, and the above part of this page, contain a true and complete transcript of the record of the judgment in the case therein named, as the same now remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the [SEAL.] seal of said court, at Jackson, this 9th day of November, A. D. 1846.

W. H. BROWN, *Clk.*

Filed 15th December, 1846.